

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

(212) 805-0194

March 2, 2021

**RE: In re Aegean Marine Petroleum Network, Inc. Securities Litigation
18 Civ. 4993 (NRB)**

Dear Counsel,

In the course of preparing for oral argument, I was perplexed to realize that there had been no serious briefing on the issue of the relationship between a Caremark claim and a securities fraud claim under Rule 10b-5. Specifically, can a Rule 10b-5 claim be pled successfully against an individual defendant if a Caremark claim against the same defendant has been found deficient? To state the issue otherwise, are the pleading standards / elements of Caremark and Rule 10b-5 claims the same? If not, how do they differ? Looking at the issue from a somewhat different perspective, if a Caremark claim has been adequately pled, does it follow as a matter of legal logic that a Rule 10b-5 claim has been pled? This latter issue is clearly relevant here given the pending appeal from this Court's decision in Kravitz v. Tavlarios, No. 19 Civ. 8438, 2020 WL 3871340 (S.D.N.Y. July 8, 2020), which was argued in front of the Second Circuit on February 25, 2021. We would appreciate an analysis from both the plaintiff and the defendants in Kravitz on the impact of an affirmance or any reversal, in whole or in part, by the Second Circuit.

To enable the Court to fully consider your submissions in advance of oral argument, the submissions shall be filed no later than Friday, March 5, 2021 at 4 PM EST. Consistent with the briefing in this case, the Court expects a joint submission from the Kravitz defendants.¹ Neither submission shall exceed ten pages.

Thank you,


Hon. Naomi Reice Buchwald

¹ For the avoidance of doubt, the Court expects a response from plaintiff and a joint response from E. Nikolas Tavlarios, Peter C. Georgiopoulos, John P. Tavlarios, and George Konomos.